

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re G.J. et al., Persons Coming Under the  
Juvenile Court Law.

B211409

(Los Angeles County  
Super. Ct. No. CK73957)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARIA H. et al.,

Defendants and Appellants.

APPEALS from orders of the Superior Court of Los Angeles County, Marguerite Downing, Judge. Affirmed.

Merrill Lee Toole, under appointment by the Court of Appeal, for Defendant and Appellant Maria H.

Donna B. Kaiser, under appointment by the Court of Appeal, for Defendant and Appellant Carlos A.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Byron G. Shibata, Senior Associate County Counsel, for Plaintiff and Respondent.

Appellant Maria H. (Mother) was married to Gabriel J. (Father) and they had a daughter, G.J. (hereinafter G., born November 1997). Mother and Father separated in 2003. Mother began living with appellant Carlos A. (Stepfather) in 2005. Mother and Stepfather have a daughter, J.A. (hereinafter referred to as J., born November 2006). J. and G. lived with Mother and Stepfather. Father is not a party to this appeal. Mother appeals from the October 6, 2008 order removing J. from her custody. Stepfather filed a separate brief, also appealing the order removing J. from his custody. Neither appeals the removal order as it applies to G. We affirm the orders.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Mother, Stepfather, J., and G. lived in a house which is divided into three separate residences. Three relatives, maternal grandmother, maternal aunt, and maternal uncle, lived in the other houses. On August 7, 2008, Los Angeles police officers responded to a call regarding sexual abuse. G. told one of the officers that Stepfather touched her vagina while she was sleeping on two or three occasions. G. said that it happened when Stepfather was drunk and Mother was at work. G. said she did not tell Mother because Mother would not believe her. G. was interviewed again at the police station. She repeated her allegations that Stepfather was drunk when he touched her, and said that the last time it occurred was one year ago. She said she went to live in the maternal grandmother's house because she did not feel comfortable with Stepfather. She said she told her friend D., who lives across the street. At the time, J. was a year old and appeared to be happy and healthy.

Two prior referrals to the Department of Children and Family Services (the Department) in 2007 for general neglect had been determined to be unfounded.

Mother arrived at the police station and was interviewed by the social worker in the presence of a police officer. Mother stated that she did not believe G. Mother claimed that G. did not like Stepfather because he made her clean the house and that G. wanted to live with Father. Mother said that G. lied before on a previous child welfare

referral and that she is not a “normal” child because she had seizures when she was younger.

Father stated that he was unable to care for G. at the time, but if she were released to him, he would relocate to Utah where he would have family support.

Stepfather was interviewed by telephone. He denied the allegations. He said that he did not know why G. would ever make such allegations but did say that she did not like it when he asked her to clean around the house.

Later in another interview, Stepfather stated, “[G.] sleeps with her uniform for school the next day so she doesn’t have to get up early, how did I unzip her pants? That’s what I heard now that I unzipped her pants. [Mother] puts on shorts and tights under her uniform dress so there’s no zipper. There was one accident that happened, one time the skirt that [G.] was wearing, accidentally I touched it and it went up. This happened about a year ago. Medically check [G.]. I am right here and I am not hiding.” Stepfather denied having problems with alcohol.

Mother stated, “My daughter never mentioned anything to me, she also never told me that she was scared of [Stepfather]. When I went out my daughter would stay with my mom or my sister. There were times when [Stepfather] was at home and I had to leave so I would tell my daughter to leave because she could not stay there with him. At times when my mom or sister were not there [G.] would tell me why she couldn’t stay with [Stepfather] because he was not her dad and I would tell her that a young girl should never stay alone with a man. [¶] . . . [¶] If my daughter would have told me about the abuse to my face, I would have believed her. Right now I don’t believe her that [Stepfather] sexually abused her because she did not say anything to me in my face.” Mother stated that Stepfather would only drink when they were celebrating. She said she had never seen him very drunk.

The social worker interviewed the maternal uncle and aunt, who said they did not believe G. either. The aunt claimed that G. lived with her. The uncle said he had never seen Stepfather drunk.

The social worker interviewed one of G.'s friends, C. C. said that G. told her that Stepfather used to hit her and J. and that G. did not like him. She never told C. that Stepfather was touching her. When they went over to see another friend, S., G. told S. that Stepfather had hit her. C. said that S. told G. to say that Stepfather had been touching her so that the police would take Stepfather away. C. said that G. made up the story so she could live with her biological father.

The social worker interviewed S., who said that G. told her that Stepfather would drink and take off her clothes and would threaten her with a knife. G. told S. that Mother would turn away and pretend she did not see anything. G. told this to S. while C. and S.'s mother were in the room.

S.'s mother told the social worker that G. told S. that Stepfather would touch her when he was drunk and that Mother knew what was going on. S.'s mother learned about G.'s allegation when S. repeated what G. had said to her. S.'s mother said that S. was in shock and was unable to sleep for days because she was worried about G.

A petition pursuant to section 300, subdivisions (b), (d), and (j) of the Welfare and Institutions Code<sup>1</sup> was filed on August 12, 2008, alleging that Stepfather was sexually abusing G. and that Stepfather abused alcohol. The children were detained and placed in foster care and Mother was granted monitored visits.

G. repeated the allegations of sexual abuse to her foster mother and the foster mother's babysitter.

On September 11, 2008, an adjudication hearing was held. G. testified that Stepfather touched her on her breast and vagina, placing his hands under her clothing while she was sleeping. She was in a room with her sister while her mother was working. It happened again on two to four occasions, and it was always after he was drinking. She admitted she did not like Stepfather. Father told her she could not move in with him. She never told Mother about the abuse, but told two friends, D. and C. She denied that

---

<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

her friend D. told her to make up stories about Stepfather. G. admitted lying to Mother on other occasions.

Stepfather testified that he usually works from 4:00 in the afternoon until 12:30 a.m., and then drives directly to Mother's place of work so they can come home together. G. slept at the maternal grandmother's house and Mother would pick her up after work. Stepfather said in the last two years G. had not slept at his house and he had never been left alone with her. He said his relationship with G. is not very good because he is strict. He said he only drinks on special occasions, usually once a month, and consumes five or six beers.

The hearing was continued until September 17, 2008. Mother testified that for the last two years, G. spent the night on the sofa or at the maternal grandmother's house and that Stepfather had never been responsible for taking care of G. Mother had never seen Stepfather "totally drunk," as he only drinks occasionally when there is something to celebrate. The maternal grandmother or maternal aunt was responsible for taking care of G. when Mother was not home. Mother did not believe G. because G. was never alone with Stepfather. G. has always wanted to live with Father. G. lies and says that Stepfather hits her. Mother said that if G. had told her that Stepfather was abusing her, she would have believed her. However, she stated that she did not believe it was possible that Stepfather was abusing G. because she knows the type of person he is. She trusted Stepfather to take care of G., but because Mother had previously been sexually abused by relatives, she did not leave G. alone with men.

After striking the allegations regarding Stepfather's alcohol abuse, the petition was sustained on September 17, 2008. The court stated: "The court finds that the minor was credible. The court does note [Stepfather's counsel's] comments with respect to the fact there were areas where she was not consistent. When I balance her testimony with the other testimony I received, and knowing the Department's burden, the court does find that the Department has met their burden. The court unfortunately finds that the minor's mother is not credible to some degree. . . . I found that the mother's responses tend to minimize what's going on. . . . The court doesn't find it credible that this child is never

alone with [Stepfather]. And the testimony about the jobs, [Stepfather] hasn't been working full-time. Mother's comments that the daughter doesn't reside at the home, it's just something the court is hearing for the very first time. And through the reports, Mother has minimized [Stepfather]'s involvement. And I understand and see where there might be a question because clearly, her daughter is not happy with her relationship. Her mother is not happy with her relationship. And I would assume that the . . . parents' argument is that she had a reason to make up something; and, therefore, she did it to move with her father. But she's very clear that she cannot go live with her father. She understands she wants to, but she knows his living situation. So that as an excuse, that she did this so that she can go to her father's, isn't credible because he's not in a position to take her. So looking at all the testimony, the court does find that the Department has met their burden."

On October 6, 2008, the court held a contested disposition hearing. Mother's counsel told the court that Stepfather was going to move out of the house and Mother was willing to obtain a restraining order against him. Stepfather's counsel concurred with that statement.

The court ordered both girls removed from the custody of Mother and Stepfather pursuant to section 361, subdivision (c), and granted them reunification services with monitored visitation. The girls were placed in separate homes, G. with Father's relatives and J. with a former babysitter.

The matter was set for a six-month review hearing on April 6, 2009. The hearing was later continued until July 8, 2009.

## **DISCUSSION**

Mother contends there is no evidence that J. would face a substantial risk of harm if she were allowed to remain in her custody. She argues that J. was happy and healthy in her care and there is no evidence J. was ever harmed. Despite the clear danger that Stepfather's abuse of G. potentially places J. at risk of being a victim of similar conduct

(*In re Rubisela E.* (2000) 85 Cal.App.4th 177, 197), Mother claims that she and Stepfather agreed that he would move out of the home. She asserts the juvenile court had no basis for concluding that she would be unable to protect J. given the new proposed living arrangement.<sup>2</sup> We disagree.

“Before the court may order a minor physically removed from his or her parent, it must find, by clear and convincing evidence, the minor would be at substantial risk of harm if returned home and there are no reasonable means by which the minor can be protected without removal. (§ 361, subd. (c)(1).) A removal order is proper if it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor if he or she remains with the parent. (*In re Jeannette S.* (1979) 94 Cal.App.3d 52, 60.) The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child. (*In re Jamie M.* (1982) 134 Cal.App.3d 530, 536, citing *In re B.G.* (1974) 11 Cal.3d 679, 699.)” (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, disapproved on another point in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

“In examining [M]other’s claim, we review the record in the light favorable to the dependency court’s order to determine whether it contains sufficient evidence from which a reasonable trier of fact could make the necessary findings by clear and convincing evidence.” (*In re Mariah T.* (2008) 159 Cal.App.4th 428, 441.)

We conclude the evidence established that J. would be at substantial risk of sexual abuse if she were left in Mother’s custody, notwithstanding Mother’s and Stepfather’s agreement that he would move from the home. Mother also asserted, through her attorney, that she would get a restraining order against Stepfather in order to get the children returned to her. However, the court was not required to believe Mother was sincere. The court had concluded that Mother testified falsely under oath to protect Stepfather. She claimed that during the two years before G.’s accusations came to light,

---

<sup>2</sup> Stepfather filed a brief joining in Mother’s argument.

G. neither slept in the same house with Stepfather nor was ever left alone with him. If that were the case, it would have been impossible for the abuse to have occurred in the manner G. described. Rejecting the proffered defense, the juvenile court believed Stepfather did molest G., a finding with which neither Mother nor Stepfather takes issue. Under the circumstances, the court had a right to take Mother's assurance that she would protect J. from Stepfather with a grain of salt.

It is also significant that Mother demonstrated to the court that given the choice of supporting Stepfather or her child, she would not hesitate to side with him. She does not believe Stepfather molested G. Moreover, she refuses to consider the possibility that he did so because he is not the "type of person" who would engage in such an act. Mother denied she had ever seen Stepfather drunk, despite his admission that he drank five to six beers during family gatherings. Mother's attachment to Stepfather caused her to minimize his actions and to be less than truthful with the court when she claimed that he never had an opportunity to molest G. The court was rightfully troubled by the lengths to which Mother would go to protect Stepfather and it reasonably concluded that it was unlikely Mother would exclude Stepfather from her life. If Stepfather were allowed to have access to J. while she was in Mother's custody, and the court justifiably believed that he would, past events established that Mother was incapable of taking reasonable steps to protect J. from suffering the same fate as her sister. J.'s removal from her Mother's custody was the only reasonable means available to protect her. (See *In re Mariah T.*, *supra*, 159 Cal.App.4th at p. 441.)



## **DISPOSITION**

The orders of the juvenile court are affirmed.

## **NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

SUZUKAWA, J.

We concur:

WILLHITE, Acting P.J.

MANELLA, J.